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National Press Council's Charter or Constitution, Draft

The Twentieth Century Fund

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Council's Charter or Constitution

I. General

*Title of Council: Task Force: Council on Press Responsibility & Press Freedom.
Q: why: Isnt National Press Council a better title?*

1. Should define Council's purpose, functions, structure, and composition.

See stated objectives of British Press Council and other councils, e.g., Minnesota, Sweden

Founding Committee

2. General purpose committee should be appointed to draft Council Constitution.

Suggestions

(a) Purpose:

- (1) To develop impartial standards for assessing media performance
- (2) To stimulate constructive criticism both inside and outside the media
- (3) To defend the media from governmental intrusions that would threaten or prove damaging to freedom of press
 - (a) To be a buffer between government and media
 - (b) It is not enough for media to defend themselves: public interest to be protected apart from media interest in media freedom
- (c) Continuous appraisal of government action affecting communications (Isaacs)
- (4) To make annual (?) report on media performance
- (5) Emphasize Council's two basic purposes (Task Force):
 - (a) To examine and report on complaints concerning accuracy and fairness
 - (b) To initiate studies and to report on issues involving freedom of press

Under (5) (b) supra Council should take strong position supporting reporter's privilege; take strong position against government actions of the kind set forth in Balk's background paper page 1, such as

- (a) blanket subpoenas of reporter's notes, photographs, film, video "outtakes" of news and public affairs coverage
- (b) phone calls and letters to editors and broadcasters from White House officials, chairman of FFC and head of U.S. information agency to inquire into planned or already disseminated comment about Administration actions.

Report of Warren Commission on the Assassination of President

Kennedy N.Y. Bantam Books - p 224:

"The Promulgation of a code of professional conduct governing representatives of all news media would be welcome ~~new~~ evidence that the press had profited by the lesson of Dallas

Quoted in Bruckner, Communication Is Power p. 99

- (c) exercise ^{of} prior restraint as in Pentagon Papers case
- (d) answer Agnew type charges when he is in error, support the charges when he is right
- (e) come to defense of unjustly maligned public officials who have no cause of action under Sullivan v. Times
- (f) reporting of criminal cases - free press - fair trial guidelines ?
- (g) monitor practice of marking documents confidential. Under (2) supra take on and condemn the Pullians? the Wm. Loeb's? See Balk background paper II p. 6-7

(b) See my memo to Rossant 9/9/72

II Sanctions

Publicity only? No penalties? Apology to injured person? Retractions and corrections? Publish only such decisions on complaints that Council dictates shall be published?

III Should Council attempt to develop a code or set of standards by which to measure media performance?

A. Arguments for a code:

- (1) Basic function of a press council is to settle standards
- (2) The media should be told what the Council reasonably expects of them and thus Council can avoid ad hoc ex post facto sanctions.

See Lord Devlin's Six Pillars, p. 2: The function of a press council is to settle standards. Many cases of misbehavior in the past have been due, not to a policy on the part of newspapers to behave as they like so long as it is not punishable, as to uncertainty as to what they could and could not do, and to a determination by each newspaper to make sure it went as far as any of its rivals, if not further. If a standard is clearly set and each journalist is given reasonable certainty that it would be observed by his competitors, he will observe it too.

- (3) No compelling need to wait for a sort of common-law accumulation of guidelines. It should not be difficult to get general agreement on many fundamentals. Why not adopt as many rules as we find suitable that British Press Council's common law has developed?
- (4) How can the Council intelligently assess performance without a set of standards?
- (5) Voluntary codes or guidelines are not regulations. What is wrong with social and professional pressure?

*Critic: Design of 6
convert situations
which lead to
substantial ethical
disputes
Intrusions into
private lives of people
in the news*

Manning [Atlantic Monthly] Letter to Editor:

"... by refusing to get together on at least the semblance of a code of ethics, of procedures, of standards - as the lawyers and the doctors, no matter how imperfectly have done - has brought onto itself the disrepute of others, from the far right through Agnew to the far left, to do the policing and standard setting for journalists - to -"

[new] Bureau has refused steadfastly to police itself. Law and medicine have ~~not~~ provided great protection from outside interference by adopting professional codes and then devising ways to break or bend the rules with considerable impunity

Balk

The nationwide standards of training, performance, and ethical practices are imposed

1,750 daily newspapers

8000 weeklies

8000 broadcast stations

other magazines & publishers

Argen's answer: Do we have a sufficiently shared consensus about what objectivity and fairness is

B. Arguments against a code:

(1) Would be attempt at regulation (Rosenthal, N.Y. Times)

Have seen this in Fair Trial-Free Press guidelines. Federal attorneys and bar in general and the bench have attempted to give them the force of regulation. Judges have mentioned them as if they were regulations.

Federal attorney for Southern District of N.Y. made it clear that he believes that the guidelines should have enforcement power behind them.

Would be suicidal for press to set up a system that would lead to codes and guidelines.

Would eliminate diversity in American press.

Would have force of regulation in the sense of social and professional pressure.

(2) British Press Council consistently avoids setting forth any formal code of conduct - its adjudications a form of common law. (Brown article 4/17/71)

(3) Sweden has no set rules for judging press behavior (Isaacs p. 24)

Argen, p 4: Media won't willingly accept outside imposition of a code of ethics if generally accepted standards, which they've refused to work out for themselves

Argen's answer: groping toward standards

Problems

I In addition to accurate and fair reporting do we want to get involved with balanced, comprehensive, sophisticated, dignified reporting? Good taste in reporting?

Can editor choose for himself to be balanced, adequate, etc.? News selection a matter of editorial discretion? Lord Devlin, Sunday Times January 5, 1972.

"At one end an area in which it would be cowardly to suppress, and at the other an area in which it would be perverse to publish - in the middle a large area in which reasonable views can be held. This middle area is the area of editorial discretion."

Editorial discretion is the very heart of freedom of the press. Without it, press would not be free.

Boundaries between presentation of facts and opinion. Can we define "News?" Define what is "Newsworthy?"

II Access to media

A First Amendment right?

See Jerome ^{Brown} Brown's Harvard Law Review Article 1967
Rep. Farbstien
Rep. Feighan bill

Argen's answer: trying to give [the council] as much influence and power and authority as possible with respect to those same matters that were immovably to give to the government

Questions that might be considered on complaints

- (1) Is basic standard to be accuracy, fairness? also adequacy?

Under adequacy how about defining area of editor's discretion?

Should there be editorial discretion as to when and what to suppress; what to stress, e.g., underplays and overplays; balance re opposing views? See A.P. alteration of story by Peter Arnett from Saigon.

This basic standard to be the governing one or should there be a code of journalism?

- (2) The basic standard would apply to:

- (a) Gross carelessness
- (b) Misleading generalizations
- (c) Exaggerations, sensational or deliberate distortions
- (d) Unfair abridgment of quotations
- (e) News slanting, editorialising in news columns instead of editorial columns
- (f) Abridging letters to editors without warning
- (g) Violation of release dates
- (h) Picture snatching
- (i) Check-book journalism
- ✓ (j) Unattributed quotation
- (k) Running advertisements as news stories

- (3) The basic standard would not apply to editorial comment, editorial discretion, or taste (See (1) above)

- (4) Is basic standard to apply to advertising?

Memo to M. J. Rosant 9/9/72

Notes and Questions on Confidentiality and Accessibility

I. Provisions to be included in Council's charter:

1. The Council would never expect the identity of sources to be revealed. That exclusion needs to be stated clearly in the charter. (Report of Aspen Discussion (C) (c))
2. We need to add a paragraph indicating our support of reporter's privilege. (Professor Pool's report on Aspen Discussion (1) p.1.
3. The Council's processes, findings, and conclusions should not be employed by legislative committees, government agencies, specifically the FCC in its proceedings on license renewals.

(a) Even if favorable to broadcaster involved?

(b) How can Council avoid such use when Council decision is adverse to broadcaster?

Is publicity of adverse decision not contemplated? If not, why hold inquiry?

(c) Council should not take cases that may have a bearing on license renewal?

(d) Can we reasonably expect to get (1) a position statement or declaratory ruling from FCC that it will not use Council's findings, etc. (even in case favorable to broadcaster)? or (2) legislation to preclude subpoenas by agencies such as FCC and by legislative committees?

(e) In any event should not such a restriction be limited to action taken on complaints and not include studies and reports on issues involving freedom of the press, the second major function of the Council?

4. Should the Council's proceedings be private, not open to the public?

(a) How about media's crusade for open meetings by government agencies? Is the policy different when the hearing is by a private body such as the Council?

(b) Could the Council set forth guidelines with respect to open hearings in certain cases or classes of cases and closed hearings in others?

Pool on Aspen 20 3:
Less restrictive provision on
reports on general issues
Should not imply that reports
would only be on cases
where gov. misbehaved against
the media

Self-perpetuating Council?
Should a 4 state government
complaints?

II. Journalist's right to refuse to disclose sources

1. Not a serious problem to Council:

- (a) Council would never expect identity of sources to be revealed.

Even if source was not promised or did not expect confidentiality?

Reporter's trade secrets? his own techniques for eliciting facts?

- (b) Council can develop a common law of rules as to when Council will or will not press reporters to reveal their sources, e.g.:

- (1) Would not press reporter to reveal information obtained in confidence, either expressly promised or reasonably expected.
- (2) Will require revelation when there no longer is any reason for confidence at time of Council's inquiry; source itself may reveal or information may be otherwise revealed.
- (3) Will expose reporter who made up his story and is trying to hide his errors: no public interest served by refusal to disclose there was no source.
- (4) Dismiss case if it is unresolvable without revelation of source.
- (5) Base Council decision on all other evidence or information Council has, including that obtained by Council's independent checks and balances.

*Can you get unestablished sources not claimed to have been collected in confidence?
See Graham p 28
I should Council get such material?*

Graham p 24: "Assuming that a broad for. which privilege will be recognized by courts or legislatures, rules will have to be worked out to lift the privilege when a journalist - defendant invokes it to shield his own failure to check the facts adequately"

*Open confession
which case may turn on identity of sources*

If charge is inaccuracy or unfairness, why should not reporter be required to show accuracy or fairness by means other than revelation of confidential sources or reporter's "trade secrets"?

Even if source is not revealed, will there not be cases in which it can be shown that report was inaccurate or unfair or indeed accurate and fair?

- (6) Should there be a rebuttable presumption of integrity of reporter?

2. Council should never ask for or indeed receive information in confidence, certainly not from one party.

- (a) The real problem is whether the Council's proceedings should be confidential when both parties want them to be or when only one party does.
- (b) Even if the rigorous position in the Caldwell case were mitigated by future developments based on Mr. Justice Powell's concurring opinion, it is doubtful that such mitigation would be extended to the Council.

The Council is not a press or broadcaster or a reporter and is a step removed from any of them.

Argument contra:

Although Council is not a press, broadcaster, or reporter, its function is identical with that of these media, namely, to ascertain and report facts. It should therefore enjoy the same protections the conventional newsgatherers enjoy. The Council is unlike a court or arbitrator and is in fact a newsgatherer whose only sanction is publicity.

3. In many, if not most cases, questions of accuracy or fairness can be resolved whether or not the reporter reveals his sources. (See II, 1 (b) (5) above)

Argument 4 Just one more voice in the public debate, one more legitimate reporter with some kind of credentials, a collective council who says we've looked at this case and they're right or they're wrong
Market theory based on 100 voices no longer applicable